CLINTON IMPEACHMENT/Witnesses and Admission of Evidence

SUBJECT: **Impeachment trial of William Jefferson Clinton for perjury and obstruction of justice. House Managers motion to depose certain witnesses and to admit as evidence certain material not in the record.**

ACTION: MOTION AGREED TO, 56-44

SYNOPSIS: On December 19, 1998, the House of Representatives impeached (indicted) President Clinton for perjury and obstruction of justice based on his actions and statements in relation to a Federal civil rights sexual harassment lawsuit that was filed against him by a former employee, Paula Corbin Jones. Ms. Jones alleged that in 1991, when she was an Arkansas State employee, then-Arkansas Governor Clinton exposed himself to her in a crude sexual advance which she refused, and that she subsequently and consequently suffered numerous adverse employment actions and was defamed. During the discovery phase of the lawsuit, the presiding judge ordered President Clinton to answer under oath certain questions posed by Ms. Jones' attorneys regarding any history he had of involvement in sexual relationships with State or Federal employees (such lines of questioning in sexual harassment lawsuits are a common means of establishing whether patterns of similar sexual harassment exist, including patterns of reward and punishment based upon the responses of subordinate employees to sexual advances). Those questions, which were posed in January, 1998, included questions regarding his relationship with a former White House intern, Monica Lewinsky (President Clinton had met Ms. Lewinsky and had begun a relationship with her when she was an intern). Later, in August, 1998, Ms. Lewinsky testified before a Federal grand jury, under a grant of immunity, regarding an affidavit she had filed in the *Jones* case. She gave detailed testimony and provided extensive corroborating physical evidence of a sexual relationship with the President. The President also testified before that grand jury in August. His testimony concerned his relationship with Ms. Lewinsky, his testimony before the Federal court in the sexual harassment lawsuit, and actions he took and statements he made before and after testifying in that lawsuit. The House impeachment of the President for obstruction of justice is based on numerous charges that he illegally tried to conceal the nature of his relationship with Ms. Lewinsky from the Federal court and the grand jury, and its impeachment of him for perjury is based on charges of numerous perjurious statements in his grand jury testimony, including

(See other side)

YEAS (56)		NAYS (44)		NOT VOTING (0)	
Republicans (55 or 100%)	**Democrats (1 or 2%)**	**Republicans (0 or 0%)**	**Democrats (44 or 98%)**	**Republicans (0)**	**Democrats (0)**
Abraham	Hutchinson	Feingold	Akaka	Kennedy	
Allard	Hutchison		Baucus	Kerrey	
Ashcroft	Inhofe		Bayh	Kerry	
Bennett	Jeffords		Biden	Kohl	
Bond	Kyl		Bingaman	Landrieu	
Brownback	Lott		Boxer	Lautenberg	
Bunning	Lugar		Breaux	Leahy	
Burns	Mack		Bryan	Levin	
Campbell	McCain		Byrd	Lieberman	
Chafee	McConnell		Cleland	Lincoln	
Cochran	Murkowski		Conrad	Mikulski	
Collins	Nickles		Daschle	Moynihan	
Coverdell	Roberts		Dodd	Murray	
Craig	Roth		Dorgan	Reed	
Crapo	Santorum		Durbin	Reid	
DeWine	Sessions		Edwards	Robb	
Domenici	Shelby		Feinstein	Rockefeller	
Enzi	Smith, Bob		Graham	Sarbanes	
Fitzgerald	Smith, Gordon		Harkin	Schumer	
Frist	Snowe		Hollings	Torricelli	
Gorton	Specter		Inouye	Wellstone	
Gramm	Stevens		Johnson	Wyden	
Grams	Thomas				
Grassley	Thompson				
Gregg	Thurmond				
Hagel	Voinovich				
Hatch	Warner				
Helms					

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

charges of perjury regarding his relationship with Ms. Lewinsky and his efforts to obstruct justice in the sexual harassment case against him.

On January 26, 1999, Manager Bryant, on behalf of the House Managers, sent a motion to the desk to authorize and order the appearance of certain witnesses at a deposition and to admit as evidence certain material not in the record. Monica Lewinsky, Vernon Jordan (a confidante of the President), and Sidney Blumenthal (an aide to the President) would be subpoenaed to appear at a deposition. The material that would be admitted as evidence would be as follows: the affidavit of Barry Ward, Law Clerk to the Honorable Susan Webber Wright (Judge Wright presided over the *Jones* lawsuit proceedings); the sworn declaration of T. Wesley Holmes (an attorney for Ms. Jones), and attachments thereto; and certain telephone conversations between Monica Lewinsky and William Jefferson Clinton, including a 56-minute exchange on December 6, 1997. Additionally, the motion would "petition the Senate to request the appearance of William Jefferson Clinton, President of the United States, at a deposition, for the purpose of providing testimony related to the Impeachment Trial."

By unanimous consent, the House Managers and the President's counsel were each given up to 2 hours to argue the motion. In accordance with Senate rules, Senators then debated the motion during closed session. The Senate earlier rejected a motion to suspend the rules to permit open debate on the House Managers motion (see vote No. 3).

Arguments by the House Managers:

In most trials, witnesses are deposed and then they are called, examined, and cross-examined. Their depositions are not simply pasted into the record so lawyers can pick out little snippets here and there and then speculate about their meaning. Witnesses are especially important when dealing with circumstantial evidence, because in such cases conclusions as to the facts need to be drawn from logical inferences that involve the credibility of the witnesses. Except for open-and-shut cases involving confessions, nearly all criminal cases involve witnesses being called because nearly all criminal cases involve some circumstantial evidence. Jurors need to be able to hear from the witnesses. As one typical jury instruction for a Federal jury put it: "You may consider the demeanor and the behavior of the witness on the witness stand; the witness' manner of testifying; whether the witness impresses you as a truthful person; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had a full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case or friendship or hostility toward other people concerned with this case."

The President's team of lawyers has falsely suggested that circumstantial evidence is of little value in a trial. This suggestion is rather a novel legal theory that, if it were ever put into practice, would make most convictions impossible. The reality is that in our legal system circumstantial evidence is properly given the same weight as direct evidence, and for both types of evidence inferences are drawn. As one Federal jury instruction put it: "An inference is a deduction or a conclusion which you . . . as finders of facts--are permitted to draw . . . from the facts which have been established by either direct or circumstantial evidence. In drawing inferences you should exercise your common sense . . . You are permitted to draw from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience."

There are numerous conflicts between the testimony of the President and the testimony of his friends, employees, and Ms. Lewinsky. Senators have heard lawyers argue about why those differences exist, but for them to get a true understanding of the facts they need to be able to hear the witnesses tell their stories themselves. Additionally, they have heard the President's lawyers come up with rather convoluted theories about why particular actions were taken, and why particular statements were made. Those theories certainly do not fit with the common-sense inferences that one would normally make. If witnesses were called, they could be asked about the conflicts between their testimony and the President's testimony and about the inventive speculations of the President's lawyers. In total, there are at least 15 people who were directly involved and should be called. Most of them are friends, employees, and/or supporters of the President.

Unfortunately, we have been given strong indications that a majority of Senators are not willing to vote to hear all of those witnesses. It may well be true that many Senators will not vote to convict no matter how overwhelming the evidence. If that is so, calling witnesses and removing any doubt in their minds as to who is telling the truth and as to what inferences must be drawn would not accomplish anything. We recognize that Senators have every right to say whom they will call and will not call, and we understand that there may be political realities that may influence Senators' votes, but we are certainly disappointed that there does not appear to be majority support at this time for calling all of the witnesses who should be called. Thankfully, we believe that there will be majority support for deposing and then possibly calling three of the main witnesses (Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal), admitting into the record certain additional information, and at least requesting the President to testify.

Ms. Lewinsky is the most important witness to call. Her credibility is critical to deciding whether the President is guilty. Many of her sworn statements directly conflict with the sworn statements of the President. She has given explicit details of her relationship with the President. Some of those details are salacious so we would prefer not to discuss them on the floor, but they are important because they go to the heart of the perjury charges. Therefore, in any questioning of this witness, we will simply ask her if she affirms those provisions of her written testimony which contain those details. On the details that demonstrate the pattern of

obstruction of justice, we will seek specific clarifications of previous statements in order to dissolve discrepancies, to reinforce the common-sense inferences that should be drawn, and to refute even more strongly the implausible inferences that have been drawn by the President's lawyers. We will ask questions about the transfer of gifts from Ms. Lewinsky to Ms. Currie, about her offer to allow the President to review her false affidavit before she signed it, about her job interviews that were arranged at the same time as her false affidavit was being crafted, about her conversations with the President about those interviews, and about her job-search and false affidavit discussions with Vernon Jordan (such as why she told him she thought a particular interview went poorly and why she thought she was offered the job anyway). We believe it would take 2 to 4 hours for a fair and comprehensive examination, and, depending on the length of cross-examination, we may not even need any time for redirect examination. Mr. Jordan should be called both to clear up discrepancies between his testimony and the testimony of other witnesses and to ask him further questions based on facts that were gained from other witnesses since he was last deposed. For instance, Ms. Lewinsky testified that on December 31, 1997, she told Mr. Jordan that her friend, Linda Tripp, may have seen notes from her to the President "lying around" Ms. Lewinsky's home, and that Mr. Jordan told her to "Go home and make sure they're not there." Mr. Jordan was not asked about that statement because it was made after the date of his last deposition. Mr. Blumenthal needs to be called in order to testify about the false statements the President made to him regarding his relationship with Ms. Lewinsky. Mr. Blumenthal repeated those statements to the grand jury, as the President knew he would. For instance, Mr. Blumenthal testified as follows: "He [Clinton] said, 'Monica Lewinsky came at me and made a sexual demand on me.' He rebuffed her. He said, 'I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.' She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker anymore." Mr. Blumenthal testified that he believed the President, and that he participated in twice-daily White House briefings that included discussions of how to handle the Lewinsky scandal with the press. Mr. Blumenthal testified before the DNA on Ms. Lewinsky's dress was proven to be from the President, and before the President made his belated admission of an "inappropriate" relationship. He needs to be reexamined in light of this new evidence.

This motion will also allow the admission of three new pieces of evidence, none of which should be controversial. The first is an affidavit from Barry Ward, who was a law clerk who witnessed an exchange between Mr. Bennett, a lawyer for President Clinton, and the judge. Mr. Bennett made statements that at the time he did not know were false, but President Clinton knew were false, and President Clinton did not offer any correction. President Clinton has testified that he was not paying attention; Mr. Ward's deposition indicates otherwise. The second is a declaration, with attachments, from Ms. Jones' attorney, T. Wesley Holmes (the attachments will be a copy of a subpoena of Ms. Currie and proof of service of that subpoena). This evidence is necessary to show that Ms. Currie was subpoenaed as a result of the suggestions made by President Clinton in his testimony that she could corroborate his testimony. The third piece of evidence is a phone record of a call between the President and Ms. Lewinsky. That evidence is necessary to counter an erroneous factual claim that was made by the defense.

The President's lawyers have suggested that we are being inconsistent by suggesting the need for fact witnesses in this trial after having not called such witnesses in the House impeachment hearings. That suggestion is wrong. An impeachment is an indictment; it is an affirmation that there is enough evidence to go to a full trial. The bar is lower for impeachment than it is for conviction, as is evinced by the fact that only a majority vote is necessary to impeach, but a two-thirds vote is required to convict. Fact witnesses were not called in the House because the written record was more than sufficient to warrant the approval of articles of impeachment.

During the House impeachment hearings, the White House's position was ostensibly the opposite of its current position: it waged a public relations campaign in the media over how unfair it was that fact witnesses were not being called. If it really wanted such witnesses, though, all it had to do was ask, because Chairman Hyde repeatedly offered to call any witnesses that the White House requested. Despite frequent, repeated public requests for the White House to say exactly which fact witnesses should testify, the White House never responded. In the end, the President's lawyers asked for a dozen so-called expert witnesses to be called, not one of whom were witnesses to the facts of the case. Still, the House obediently heard their testimony. The truth is that the White House did not and does not want fact witnesses to be called in any forum.

In our estimation the process of calling and examining these three witnesses will take no more than a few days. Those Senators who are anxious to bring this matter to a close need not worry that the process will drag on for months. We know that the President's lawyers have suggested that if this motion is approved the trial may drag on endlessly, but that suggestion is nothing more than an empty threat. The President's lawyers want this trial to end soon so they are not going to delay matters. Calling just three key witnesses as proposed in this motion will not add much in time to this trial but it will give Members a clearer picture of the basis for the articles of impeachment.

Arguments by lawyers for the President:

We are not afraid or reluctant to call witnesses for any substantive reason. Our only opposition to this motion is that it will waste time. The record is complete. Independent Counsel Starr has done a very thorough job of investigating the President, taking 5 years and spending $50 million. On the subject before us, there are 10,000 pages of grand jury testimony, 800 pages of other testimony

such as depositions, 3,400 pages of documentary evidence, 1,800 pages of audio transcripts, and 800 pages of Federal Bureau of Investigation interviews. If we call witnesses, all we will hear is the same old testimony. We doubt that the Managers will be able to think of anything new to ask, and the prospect of any new information coming out is nearly nonexistent. Of course, it is that desperate hope for new information that may be driving this motion.

Interestingly, the House Managers did not feel any need to call fact witnesses during the House proceedings. They rushed through those hearings. At the time, we argued strongly that they should call fact witnesses, but we were rebuffed. The House Managers said that the record already had enough information on which to vote on the articles of impeachment. If there was enough information in the House, there is enough information in the Senate. The Managers tell us that there is a difference between the House impeachment, which only required enough evidence to impeach, or charge, the President, and the Senate trial, which requires a conviction on a two-thirds vote. They tell us that the Senate trial must develop the evidence more fully because the burden of proof is higher. That argument may be logical, but it is suspect because it is of such recent vintage. The Managers never told us that we did not need fact witnesses in the House because they would be called in the Senate; they just said that fact witnesses would not be needed because the record was complete. We submit that the real difference now is that the Mangers were in a hurry in the House because they knew they had the votes to impeach, but that they want to slow the process down in the Senate because they know that they do not have the two-thirds vote they need to convict.

If this motion is agreed to, it is very likely that the process will slow down dramatically. Our job is to give the President a thorough defense, and we would be remiss in our duties if we did not demand thorough discovery and the opportunity to call other witnesses to provide additional exculpatory evidence. Agreeing to this motion will force us to add weeks or even months to the time it will take to complete this trial. In the end, the result will be the same. New evidence will not magically appear to strengthen the weak charges against the President because such evidence does not exist.

Members debated the motion in closed session.